IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.E.C. No.: 27 of 2004 (O&M)
Date of decision: August 08, 2006

The Commissioner, Central Excise Commissionerate.

---Petitioner

Vs.

M/s Karam Steel Corporation & another.

-----Respondents

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE RAJESH BINDAL

Present: Mr. M.S. Guglani, Advocate
for the petitioner.

Mr. Balbir Singh, Advocate
for the respondents.

ORDER:

This petition has been filed under Section 35 H(1) of the Central Excise Act, 1944 (for short, "the Act"), seeking reference of following question of law:-

> "Whether the Tribunal has erred in allowing the appeal of the party in view of Apex Court decision in the case of Ujagar Prints Vs. U.O.I. under which the parties were required to include the cost of raw material plus job work charges plus job worker's profit plus any other consideration flowing directly or indirectly whereas in this case same has not been disclosed by the parties before the Deptt. while arriving at assessable value"?

The assessee is engaged in job work for conversion of raw material supplied by Steel Authority of India (SAIL) into finished goods. The goods are sold by assessee on behalf of the SAIL at the price fixed by SAIL. Respondent No.1 filed declarations under proviso to Rule 173-C(1) of the Central Excise Rules, 1944 for determination of value under Section 4 of the Act, on the basis of sale value of goods which were directly cleared to customers of SAIL. The adjudicating authority

confirmed the demand of additional duty. Interest and penalty was also imposed, observing that the assessee had under-valued the goods since the cost of raw material, job work charges and job workers' profit were not separately specified. This view was affirmed by Commissioner (Appeals). The Tribunal, however, set-aside the findings recorded by the adjudicating authority and the appellate authority. It was held that the "assessable value" of goods included value of raw material, value of job work and other manufacturing expenses and in the price fixed by the SAIL, all these factors were taken into account. The Tribunal held:-

> "4. We have perused the records and have heard the learned SDR also. The present Appellants are merely carrying out job work on behalf of SAIL. They convert semis (billets, blooms and salbs) into finished goods e.g. angle, channel, joists etc. They received conversion charges for the job carried out by them. After conversion, the items are sold by them at prices fixed by SAIL. The appellant job workers fell in the category of manufacturers liable to pay central Excise duty. According to the law laid down by the Apex Court in the Ujaggar Prints case, assessable value of processed goods should take in the value of the raw materials and the conversion cost and the profit of the job workers. It is not to include the profit of the merchant who finally sells the processed goods. In the present cases, the goods were sold on behalf of SAIL and the appellants paid duty at the time of removal of the goods on the sale price of SAIL. Thus, it is a case where the assessable value included all the costs and profits upto the sale of the gods i.e. the profit of the merchant (SAIL) and not merely the cost of the materials and the cost of conversion by the appellant job workers and their profit. The assessable value adopted by the appellants could only be in excess of assessable value liable to be adopted by the appellants. There could be no arguing that by adopting the sale price of SAIL, the appellants under valued the goods and paid less duty then was due. IT is apparent that there could be so short levy in respect of the goods cleared by the appellants. The duty demands made against the appellants are clearly the result of a gross

misunderstanding of the principles of valuation laid down by the Apex Court in the Ujaggar Prints Case. These demands are not sustainable."

We have heard learned counsel for the parties.

The Tribunal has clearly held that the assessable value has included costs and profit upto the sale of goods – not merely cost of materials and cost of conversion and profit of job workers. This finding is not shown to be perverse. No substantial question of law arises for reference.

Petition is dismissed.

(ADARSH KUMAR GOEL)
JUDGE

August 08, 2006
ashwani

(RAJESH BINDAL)
JUDGE